IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Bail Appl..No. 5260 of 2007()

CC.1468/2006 of J.M.F.C.-I, PUNALUR
Cr.No.15/2002 OF ANJAL POLICE STATION

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: PETITIONER/ACCUSED

JAMES, S/O.MATHAI, MOOZHIKKACHALIL HOUSE, PIRALI P.O., MANJALLOOR, MUVATTUPUZHA, ERNAKULAM DISTRICT.

BY ADV. SRI.A.C.DEVY

RESPONDENTS: STATE

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5260 of 2007

Dated this the 7th day of September 2007

O R D E R

Application for anticipatory bail. The petitioner is the accused in a pending case. He faces indictment inter alia under Sections 379 and 465 I.P.C. Investigation is complete. Final report has already been filed. The petitioner had appeared before the learned Magistrate. He was enlarged on bail. But as he did not appear before the learned Magistrate, a warrant of arrest has been issued by the learned Magistrate against the petitioner. According to the petitioner he is absolutely innocent. His absence was not wilful or deliberate. The petitioner now wants to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

2. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending

proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate.

3. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

4. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself .

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007